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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

William Brady Cashman; Steve Lee Cox;  
Robert F. Macknis; Karl Douglas  
Mehrhof; Frank J. Namio; Emil F.  
Nobile; Terrence Lawton Sheahan; and  
Wayne D. Wilcoxon,

Plaintiffs,

v.

Arizona Public Service Company,  
Defendant.

Case No. CV-2-11-00153-GMS

**JOINT MOTION TO APPROVE  
SETTLEMENT AGREEMENT AND  
DISMISS LAWSUIT WITH  
PREJUDICE**

1 Plaintiffs William Brady Cashman, Steve Lee Cox, Robert F. Macknis, Karl  
 2 Douglas Mehrhof, Frank J. Namio, Emil F. Nobile, Terrence Lawton Sheahan and  
 3 Wayne D. Wilcoxon and Defendant Arizona Public Service Company, by and through  
 4 their respective counsel, file this joint motion to approve their settlement agreement and  
 5 dismiss this lawsuit with prejudice.

### 6 **PRELIMINARY STATEMENT**

7 On January 21, 2011, Plaintiffs filed their Complaint, alleging that Defendant  
 8 violated the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (the “FLSA”), by  
 9 misclassifying them as exempt employees, and failing to pay them for overtime pay for  
 10 time worked over forty (40) hours in a workweek. In its Answer, APS denied the  
 11 allegations and denied that it owed Plaintiffs any compensation.

12 The seminal case on the settlement of FLSA cases is *Lynn’s Food Stores, Inc. v.*  
 13 *United States*, 679 F.2d 1350, 1352-55 (11th Cir. 1982). The Ninth Circuit has not ruled  
 14 on this issue but, as shown below, several district court judges in the Ninth Circuit have  
 15 cited that case with approval. The *Lynn’s Food Stores* decision, like the FLSA, confirms  
 16 that claims arising under the FLSA may be settled or compromised *only* with the  
 17 approval of the District Court or the Secretary of Labor. The Parties request that the  
 18 Court approve their settlement, as set forth more fully in the Release and Settlement  
 19 Agreement attached as Exhibit 1.

### 20 **ARGUMENT AND CITATION OF LEGAL AUTHORITY**

21 Employees cannot waive claims for unpaid overtime under the FLSA. To ensure  
 22 that the employer is relieved of liability in the context of a negotiated settlement  
 23 agreement, the settlement of an FLSA claim must either be supervised by the Secretary of  
 24 Labor, as provided by 29 U.S.C. § 216(c), or must be approved by the District Court. *See*  
 25 *Hand v. Dionex Corp.*, 2007 U.S. Dist. LEXIS 87026, \*1 (D. Ariz. Nov. 13, 2007) (citing  
 26 *Lynn’s Food Stores*, 679 F.2d at 1352-55); *see also Rose v. Wildflower Bread Company*,  
 27 2011 U.S. Dist. LEXIS 69953, \*3 (D. Ariz. June 29, 2011); *In re: Sepracor, Inc. FLSA*  
 28 *Litigation*, 2009 U.S. Dist. LEXIS 97791, 5 (D. Ariz. Oct. 9, 2009).

1 If a settlement reflects a “reasonable compromise over issues, such as . . .  
2 computation of back wages, that are actually in dispute,” the district court may approve  
3 the settlement “in order to promote the policy of encouraging settlement of litigation.”  
4 *Lynn’s Food Stores*, 679 F.2d at 1354. Such settlements must be fair. *Id.* at 1353.

5 In this action, Plaintiffs allege APS violated the FLSA by misclassifying them as  
6 exempt employees and failing to pay them for hours worked in excess of 40 hours in a  
7 work week at one and one-half times their regular rate. APS believes Plaintiffs were  
8 properly classified under the highly compensated exemption or the administrative  
9 exemption. The parties have now agreed to settle this dispute, as set forth more fully in  
10 the Settlement Agreement.

11 The Settlement Agreement represents a fair and equitable resolution of this matter  
12 given the facts of this case, as well as the complex and numerous legal issues involved.  
13 This action will benefit Plaintiffs, especially in light of the uncertainty regarding  
14 Plaintiffs’ recovery. Liability under the FLSA is a contested issue, with APS strongly  
15 contending that Plaintiffs were exempt. Other defenses at issue include the statute of  
16 limitations and good faith defenses to liquidated damages. The resolution of those issues  
17 would dramatically affect any damages award in this case.

18 Finally, the proposed distribution to each of the Plaintiffs is fair and equitable  
19 since it is directly related to the amount of hours each Plaintiff worked for APS. Indeed,  
20 the settlement terms are proportional to the hours actually worked by each Plaintiff.

21 The settlement is the product of many days of discussions, involving one day with  
22 a private mediator, and many additional negotiations between the parties. It is not the  
23 product of fraud, but rather reflects an arms-length negotiation of a difficult dispute.

24 In light of the risks facing both parties in proceeding through litigation, the parties  
25 have agreed to settle Plaintiffs’ FLSA claims and this case, on the following terms,  
26 including but not limited to:

27 1. APS agrees to pay a settlement amount to each Plaintiff. The settlement  
28 amount includes, without limitation, payment to the Plaintiffs for alleged overtime work

1 performed in any workweek between January 21, 2009 through the present. The  
 2 settlement amount also provides an additional payment for avoidance of litigation costs.

3 2. APS has denied liability or wrongdoing under the FLSA and all other  
 4 applicable law.

5 3. Plaintiffs and APS agree to dismiss this action with prejudice.

6 4. Plaintiffs have signed a release of claims.

7 The terms of the Settlement Agreement are contingent upon a finding by the Court  
 8 that it approves the settlement as a fair and equitable resolution of this action. *Lynn's*  
 9 *Food Stores, Inc.*, 679 F.2d 1350, 1354 (11th Cir. 1982). Accordingly, the parties  
 10 respectfully request that the Court make such a determination with respect to the terms  
 11 set forth in the Settlement Agreement and enter the proposed Order, filed concurrently  
 12 herewith, granting the joint motion to approve settlement agreement and dismiss the  
 13 lawsuit with prejudice.

14 DATED this 26th day of August, 2011.

15 SNELL & WILMER L.L.P.

17 By s/ John F. Lomax, Jr.

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**CERTIFICATE OF SERVICE**

☒ I hereby certify that on August 26, 2011, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/ Monica Kramer

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